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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF ARIZONA**

8 **Khalafa M. Khalafala,**
9 Plaintiff
-vs-
10 **Katrinia Kane, et al.,**
Defendants

CV-09-1148-PHX-ROS (JRI)

ORDER

11 Under consideration is Defendants' Motion to Vacate Scheduling Order and Stay
12 Discovery, filed July 23, 2010 (Doc. 76). Defendants argue that their Motion for Summary
13 Judgment, filed July 23, 2010 (Doc. 73) is likely to resolve this matter, that Plaintiff has
14 served significant discovery requests, and that an efficient resolution of the matter calls for
15 a hiatus in pretrial procedures until the dispositive motion is resolved.

16 Plaintiff responds (Doc. 86) that: Defendants: are too late, have drug their feet on
17 disclosure and a joint discovery plan, shouldn't be permitted to ignore the scheduling order
18 simply because they have filed a dispositive motion, haven't established a likelihood of
19 success on their dispositive motion, haven't shown that discovery is not needed to resolve
20 the dispositive motion, haven't shown the discovery is burdensome. Plaintiff complains he
21 will be prejudiced by a halt of discovery because his motion for preliminary relief remains
22 pending.

23 Defendants reply (Doc. 84) that, *inter alia*, Plaintiff may seek protection under Rule
24 56(f) for purposes of obtaining discovery necessary to respond on the motion for summary
25 judgment, and his discovery has not, to date, addressed his motion for preliminary relief.

26 The Court is not swayed by Plaintiff's procedural complaints. The motion to stay is
27 timely and properly brought. The motion for preliminary relief is now fully briefed. Thus
28 the sole question is whether the pendency of the motion for summary judgment justifies

1 delay.

2 Rule 1 directs the Court to pursue a “just, speedy, and inexpensive determination of
3 every action.” If it is assumed that Defendants’ Motion for Summary Judgment will be
4 successful, then the proper balancing of these interests would call for a stay of any discovery
5 not necessary to a fair resolution of the motion. If a contrary assumption is made, the Court
6 should require the parties to press on. Unfortunately, the Court cannot assume, but must
7 prognosticate based upon the incomplete briefing on the motion.

8 Defendants’ motion for summary judgment asserts a general defense of qualified
9 immunity. As to Plaintiff’s conditions of confinement claims, Defendants rely upon a series
10 of cases addressed to the conditions which must be tolerated by pretrial detainees, and argue
11 that Plaintiff has been placed in administrative segregation upon his own request and based
12 upon his mental illness. (Defendants do not address Plaintiff’s unique status as a civil
13 detainee, as opposed to a criminal pretrial detainee. *See e.g. Jones v. Blanas*, 393 F.3d 918,
14 932 (9th Cir. 2004).) Defendants argue that Plaintiff’s transfer to the Pinal County Adult
15 Detention Center was not in retaliation for any First Amendment protected action by
16 Plaintiff, but was part of a wholesale transfer of hundreds of detainees with Plaintiff’s
17 security risk level. They argue that Plaintiff’s threat to safety claim is unfounded because
18 of the limited risk he faces among detainees, and the absence of any evidence of a prior
19 assault or assault threat. They argue that his due process claim is unfounded because his
20 transfer was not for disciplinary reasons, but as part of the wholesale transfers mandated by
21 facility management concerns.

22 Although Plaintiff is not required to brief the motion for summary judgment in
23 responding to this motion to stay, Plaintiff proffers no reason to believe that summary
24 judgment will not be granted. Therefore, at this juncture, it appears that there is a significant
25 likelihood that Defendants will be successful in their motion, if not in total then at least as
26 to some claims.

27 To the extent that the Court might harbor some doubts, a showing that specific
28 discovery was necessary to address the dispositive motion might tempt the Court to err on

1 the side of pressing the matter forward. Plaintiff makes no suggestion that any outstanding
2 discovery requests are necessary to allow him to respond to the summary judgment motion.
3 And, as noted by, Defendants, Plaintiff still has available to him a motion under Rule 56(f).

4 Moreover, as noted by Defendants, a qualified immunity defense is intended to shield
5 a defendant not only from judgment but “in protecting public officials from the costs
6 associated with the defense of damages actions.” *Crawford-El v. Britton*, 523 U.S. 574, 590
7 (1998).

8 As Plaintiff argues, qualified immunity is only an immunity from suit for damages,
9 it is not an immunity from suit for declaratory or injunctive relief. *See L.A. Police Protective*
10 *League v. Gates*, 995 F.2d 1469, 1472 (9th Cir. 1993). And, it is true that Plaintiff’s
11 complaint seeks injunctive relief in the form of a release from custody. However, in light of
12 the nature of Plaintiff’s claims, the Court finds it highly unlikely that an absolute release
13 from custody would ever be ordered in this proceeding. While the Court might fashion some
14 lesser injunctive relief (*see* Fed. R. Civ. P. 54(c) (relief not limited by demand)), the potential
15 for such relief is limited, particularly based on Plaintiff’s conditions of confinement claim.

16 Further, although Defendants’ motion hails primarily on the basis of qualified
17 immunity, it directly attacks the core of Plaintiff’s allegations which are necessary to
18 maintain his claims for injunctive relief as well. Thus, the motion may well narrow the issues
19 to be resolved in disposing of Plaintiff’s claims for injunctive relief.

20 Finally, the Court notes that Plaintiff’s response to the motion for summary judgment
21 is due September 9, 2010, and a reply brief two weeks later. Thus, a reasonably prompt
22 resolution of the motion for summary judgment is to be expected.

23 **IT IS THEREFORE ORDERED** that Defendants' Motion to Vacate Scheduling
24 Order and Stay Discovery, filed July 23, 2010 (Doc. 76) is **GRANTED**.

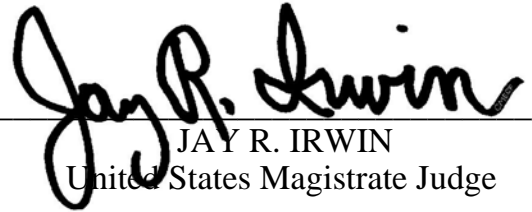
25 **IT IS FURTHER ORDERED** that the Court’s Scheduling Order, filed June 24, 2010
26 (Doc. 66) is **VACATED**.

27 **IT IS FURTHER ORDERED** that the service of all further discovery requests is
28 stayed, and the deadlines for responding to outstanding discovery requests vacated, to be

1 reset upon further order of the Court.

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4 DATED: August 31, 2010

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JAY R. IRWIN
United States Magistrate Judge